

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2667 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

MEGHSINH GANPATSINH KHICHI

Versus

KHUMANSINH BHUPENDRASINH SOLANKI

Appearance:

MR JAYESH A DAVE for Petitioner

MR JR DAVE for Respondent No. 1

MR UA TRIVEDI ADDL PUBLIC PROSECUTOR for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 24/06/1999

ORAL JUDGEMENT

#. Rule. With consent of the advocates appearing for the respective parties, this matter is taken up for hearing today. Mr.J.R. Dave, Ld. advocate appearing for the respondent No.1 and Mr.Trivedi, Ld. APP waive service of rule.

#. Heard Mr.J.A.Dave, Ld. Advocate for the petitioner, Mr.J.R. Dave for respondent No.1 and Mr.Trivedi, Ld. APP for the respondent No.2 - State.

#. The contention of Mr.J.A. Dave is that the commercial transaction of civil nature has attempted to be converted into criminal case and an attempt is also made to seize and recover the money from the petitioner when he himself is not directly concern with the transactions that respondent No.1 original complainant had with one Bhimsinh Raivatsinh Champavat who is principal borrower. The petitioner was only a guarantor and now an attempt is being made to involve him in criminal offence. He also further submits that no specific allegations is made out against the present petitioner even in the complaint. The vehicle is seized by the police during the course of investigation. It is further submitted that the said vehicle is still in the name of respondent No.1 Company i.e.. Rathore Leasing & Finance Co. Ltd. and therefore, it is not sold and transferred. The complaint vis-a-vis the present proceedings therefore may be quashed.

#. Mr.J.R.Dave, learned advocate for the respondent No.1 has contended that the petitioner was defacto the borrower for the bus but because he was serving with the Rajasthan State Road Transport Corporation, the borrowing was in the name of Bhimsingh Raivatsinh Champavat and this is substantiated by the fact that delivery of the bus was taken from the dealer by the present petitioner and he has sold of the vehicle. The body of the vehicle is yet not traceable. The police has recovered various components of the bus from various places. This indicates that the petitioner is involved in the offence and therefore this Court may not exercise its power at this stage. The investigation may be permitted to go on and the petition therefore stands dismissed.

#. The contention of Mr.Trivedi, learned APP is that investigation is going on. The police has recovered the gear box and chassis from a coach builder. The engine and other parts such as radiator etc. are recovered from another automobile garage. The investigation reveals that the chassis were given to coach builders for building the body and the engine was given for overhauling and repairs. When pointedly asked to Mr.Trivdi, Ld. APP, he conceded that uptill now during the course of the investigation, there is no evidence collected against the present petitioner.

#. Having regard to the facts and circumstances of the

case and contents of the complaint, it is amply clear that the matter / complaint relates to a commercial transactions of civil nature. Admittedly the petitioner is serving with the Rajasthan State Road Transport Corporation. He is not the principal borrower. The vehicle admittedly met with an accident on 26th December, 1996 and it has been given for repairs. Keeping of these aspects in light, besides the fact that the complain does not speak of any specific allegation against the present petitioner. The petition deserves to be allowed. Under these circumstances, the following order is passed.

#. The complaint investigated upon by the police stands quashed in respect of the present petitioner alone. Rule is made absolute accordingly. The matter stands disposed of accordingly.

Date : 24-6-1999 [A.L.Dave, J.]

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